

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

CHAD and VANESSA NUNEZ,)	
Successor in Interest to BANCO)	
POPULAR de PUERTO RICO,)	
)	
Plaintiffs,)	Civil No. 2005-7
)	
v.)	
)	
CASSANDRA LOVELL a/k/a)	
CASSANDRA MAUREEN LOVELL, TOM)	
GIGILOTTI and MAGEN's RIDGE)	
CONDOMINIUM ASSOCIATION,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Adam Hoover, Esq.
St. Croix, U.S.V.I.
For the Plaintiffs.

Cassandra Lovell a/k/a Cassandra Maureen Lovell
Pro se defendant.

Tom Gigilotti
Pro se defendant.

David A. Bornn, Esq.
St. Thomas, U.S.V.I.
For Magen's Ridge Condominium Association.

ORDER

GÓMEZ, C.J.

Banco Popular De Puerto Rico ("Banco Popular") commenced this debt and foreclosure action in January, 2005 against the defendants, Cassandra Lovell a/k/a Cassandra Maureen Lovell ("Lovell"), Tom Gigilotti ("Gigilotti") and Magen's Ridge Condominium Association ("MRCA"). Neither Lovell nor Gigilotti

has ever been represented by counsel during these proceedings. MRCA is represented by Attorney David A. Bornn, Esq. ("Bornn").

MRCA thereafter filed an answer and cross-claim against Lovell and Gigilotti. Default was entered against Lovell and Gigilotti in July, 2005.

In October, 2005, Banco Popular moved for summary judgment against MRCA and default judgment against Lovell and Gigilotti. MRCA filed a response to the motion. That motion is pending.

In September, 2006, the plaintiffs in this matter, Chad Nunez and Vanessa Nunez (the "Plaintiffs"), filed a notice of substitution of real party in interest, asserting that they had acquired Banco Popular's mortgage. The notice was signed and filed by Bornn.

In February, 2007, the Plaintiffs and MRCA, through their identical counsel, Bornn, filed a renewed request for entry of default against Lovell and Gigilotti.¹ That request is pending.

On June 26, 2008, the Court held a status conference in this matter. Bornn attended on behalf of the Plaintiffs and MRCA. No other party attended. The Court ordered Bornn to file a brief on whether an attorney could represent a plaintiff and a defendant

¹ It is unclear why the Plaintiffs and MRCA renewed their request for entry of default, since default was entered against Lovell and Gigilotti and the record does not reflect that the entry of default was vacated or is otherwise ineffective.

in the same case, notwithstanding both the plaintiff's and the defendant's written waivers.

Bornn did not file such a brief. On July 9, 2008, Bornn and Attorney Adam Hoover, Esq. ("Hoover") filed a notice of substitution of counsel. Hoover is now counsel of record for the Plaintiffs. Bornn remains as counsel for MRCA.

Rule 1.3 of the American Bar Association's Model Rules of Professional Conduct provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." The Preamble to the Model Rules states that "[a]s advocate, a lawyer zealously asserts the client's position under the rules of the adversary system."

Furthermore, Rule 1.7(a) of the Model Rules provides, in pertinent part, that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest[, which] exists if the representation of one client will be directly adverse to another client." Rule 1.7(b) qualifies that prohibition, providing that a lawyer may represent a client notwithstanding the existence of a concurrent conflict of interest if, *inter alia*, "the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation."

Finally, Rule 1.9 of the Model Rules provides, in pertinent part, that "[a] lawyer who has formerly represented a client in a

matter shall not thereafter represent another person in the same . . . matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing."

The premises considered, it is hereby

ORDERED that, no later than **2:00 p.m. on Friday, July 25, 2008**, both Hoover and Bornn shall file separate briefs, with citations to appropriate authority, regarding whether Bornn should be disqualified.

S_____
CURTIS V. GÓMEZ
Chief Judge